

AMENDED IN SENATE APRIL 3, 2006

SENATE BILL

No. 1831

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Introduced by Senator Margett

February 24, 2006

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An act to amend Section 2932 of the Penal Code, relating to inmates.

LEGISLATIVE COUNSEL'S DIGEST

SB 1831, as amended, Margett. Inmates.

Existing law provides that no more than ~~360~~ 30 days good behavior or worktime credit can be denied to an inmate for commission of a single ~~criminal act, as specified~~ *act of misconduct defined by regulation as a serious disciplinary infraction*.

This bill would ~~make a technical, nonsubstantive change to these provisions~~ *instead provide that not more than 30 days credit can be denied an inmate for a serious disciplinary infraction, except that the Secretary of the Department of Corrections and Rehabilitation may establish the number of days of credit that may be denied or lost for any misconduct defined by regulation as a serious rule violation that is not defined in statute, as specified*.

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 2932 of the Penal Code is amended to
- 2 read:
- 3 2932. (a) (1) For any time credit accumulated pursuant to
- 4 Section 2931 or 2933, not more than 360 days of credit may be

1 denied to or lost by a prisoner for a single act of murder,  
2 attempted murder, solicitation of murder, manslaughter, rape,  
3 sodomy, or oral copulation accomplished against the victim's  
4 will, attempted rape, attempted sodomy, or attempted oral  
5 copulation accomplished against the victim's will, assault or  
6 battery causing serious bodily injury, assault with a deadly  
7 weapon or caustic substance, taking of a hostage, escape with  
8 force or violence, or possession or manufacture of a deadly  
9 weapon or explosive device, whether or not prosecution is  
10 undertaken for purposes of this paragraph. Solicitation of murder  
11 shall be proved by the testimony of two witnesses, or of one  
12 witness and corroborating circumstances.

13 (2) Not more than 180 days of credit may be denied or lost for  
14 a single act of misconduct, except as specified in paragraph (1),  
15 which could be prosecuted as a felony whether or not prosecution  
16 is undertaken.

17 (3) Not more than 90 days of credit may be denied or lost for a  
18 single act of misconduct which could be prosecuted as a  
19 misdemeanor, whether or not prosecution is undertaken.

20 (4) ~~Not~~ *The Secretary of the Department of Corrections and*  
21 *Rehabilitation has the authority to establish, within the range of*  
22 *0 to 180 days, the number of days of credit that may be denied or*  
23 *lost for any misconduct defined by regulation as a serious rule*  
24 *violation that the Secretary determines to be a threat to the*  
25 *security and management of a prison, if that misconduct is not*  
26 *defined in statute as a felony or misdemeanor.*

27 (5) *Except as provided in paragraph (4), not*  
28 more than 30 days of credit may be denied or lost for a single act  
29 of misconduct defined by regulation as a serious disciplinary  
30 offense by the Department of Corrections. Any person confined  
31 due to a change in custodial classification following the  
32 commission of any serious disciplinary infraction shall, in  
33 addition to any loss of time credits, be ineligible to receive  
34 participation or worktime credit for a period not to exceed the  
35 number of days of credit which have been lost for the act of  
36 misconduct or 180 days, whichever is less. Any person confined  
37 in a secure housing unit for having committed any misconduct  
38 specified in paragraph (1) in which great bodily injury is inflicted  
39 upon a nonprisoner shall, in addition to any loss of time credits,  
40 be ineligible to receive participation or worktime credit for a

1 period not to exceed the number of days of credit which have  
2 been lost for that act of misconduct, or for the period that the  
3 prisoner is confined in a secure housing unit, whichever is less.  
4 In unusual cases, an inmate may be denied the opportunity to  
5 participate in a credit qualifying assignment for up to six months  
6 beyond the period specified in this subdivision if the Director of  
7 Corrections finds, after a hearing, that no credit qualifying  
8 program may be assigned to the inmate without creating a  
9 substantial risk of physical harm to staff or other inmates. At the  
10 end of the six-month period and of successive six-month periods,  
11 the denial of the opportunity to participate in a credit qualifying  
12 assignment may be renewed upon a hearing and finding by the  
13 director.

14 The prisoner may appeal the decision through the department's  
15 review procedure, which shall include a review by an individual  
16 independent of the institution who has supervisory authority  
17 over the institution.

18 (b) For any credit accumulated pursuant to Section 2931, not  
19 more than 30 days of participation credit may be denied or lost  
20 for a single failure or refusal to participate. Any act of  
21 misconduct described by the Department of Corrections as a  
22 serious disciplinary infraction if committed while participating in  
23 work, educational, vocational, therapeutic, or other prison  
24 activity shall be deemed a failure to participate.

25 (c) Any procedure not provided for by this section, but  
26 necessary to carry out the purposes of this section, shall be those  
27 procedures provided for by the Department of Corrections for  
28 serious disciplinary infractions if those procedures are not in  
29 conflict with this section.

30 (1) (A) The Department of Corrections shall, using reasonable  
31 diligence to investigate, provide written notice to the prisoner.  
32 The written notice shall be given within 15 days after the  
33 discovery of information leading to charges that may result in a  
34 possible denial of credit, except that if the prisoner has escaped,  
35 the notice shall be given within 15 days of the prisoner's return  
36 to the custody of the Director of Corrections. The written notice  
37 shall include the specific charge, the date, the time, the place that  
38 the alleged misbehavior took place, the evidence relied upon, a  
39 written explanation of the procedures that will be employed at  
40 the proceedings and the prisoner's rights at the hearing. The

1 hearing shall be conducted by an individual who shall be  
2 independent of the case and shall take place within 30 days of the  
3 written notice.

4 (B) The Department of Corrections may delay written notice  
5 beyond 15 days when all of the following factors are true:

6 (i) An act of misconduct is involved which could be  
7 prosecuted as murder, attempted murder, or assault on a prison  
8 employee, whether or not prosecution is undertaken.

9 (ii) Further investigation is being undertaken for the purpose  
10 of identifying other prisoners involved in the misconduct.

11 (iii) Within 15 days after the discovery of information leading  
12 to charges that may result in a possible denial of credit, the  
13 investigating officer makes a written request to delay notifying  
14 that prisoner and states the reasons for the delay.

15 (iv) The warden of the institution approves of the delay in  
16 writing.

17 The period of delay under this paragraph shall not exceed 30  
18 days. The prisoner's hearing shall take place within 30 days of  
19 the written notice.

20 (2) The prisoner may elect to be assigned an employee to  
21 assist in the investigation, preparation, or presentation of a  
22 defense at the disciplinary hearing if it is determined by the  
23 department that: (i) the prisoner is illiterate; or (ii) the complexity  
24 of the issues or the prisoner's confinement status makes it  
25 unlikely that the prisoner can collect and present the evidence  
26 necessary for an adequate comprehension of the case.

27 (3) The prisoner may request witnesses to attend the hearing  
28 and they shall be called unless the person conducting the hearing  
29 has specific reasons to deny this request. The specific reasons  
30 shall be set forth in writing and a copy of the document shall be  
31 presented to the prisoner.

32 (4) The prisoner has the right, under the direction of the person  
33 conducting the hearing, to question all witnesses.

34 (5) At the conclusion of the hearing the charge shall be  
35 dismissed if the facts do not support the charge, or the prisoner  
36 may be found guilty on the basis of a preponderance of the  
37 evidence.

38 (d) If found guilty the prisoner shall be advised in writing of  
39 the guilty finding and the specific evidence relied upon to reach  
40 this conclusion and the amount of time-credit loss. The prisoner

1 may appeal the decision through the Department of Corrections’  
2 review procedure, and may, upon final notification of appeal  
3 denial, within 15 days of the notification demand review of the  
4 department’s denial of credit to the Board of Prison Terms, and  
5 the board may affirm, reverse, or modify the department’s  
6 decision or grant a hearing before the board at which hearing the  
7 prisoner shall have the rights specified in Section 3041.5.

8 (e) Each prisoner subject to Section 2931 shall be notified of  
9 the total amount of good behavior and participation credit which  
10 may be credited pursuant to Section 2931, and his or her  
11 anticipated time-credit release date. The prisoner shall be notified  
12 of any change in the anticipated release date due to denial or loss  
13 of credits, award of worktime credit, under Section 2933, or the  
14 restoration of any credits previously forfeited.

15 (f) If the conduct the prisoner is charged with also constitutes  
16 a crime, the Department of Corrections may refer the case to  
17 criminal authorities for possible prosecution. The department  
18 shall notify the prisoner, who may request postponement of the  
19 disciplinary proceedings pending the referral.

20 The prisoner may revoke his or her request for postponement  
21 of the disciplinary proceedings up until the filing of the  
22 accusatory pleading. In the event of the revocation of the request  
23 for postponement of the proceeding, the department shall hold  
24 the hearing within 30 days of the revocation.

25 Notwithstanding the notification requirements in this paragraph  
26 and subparagraphs (A) and (B) of paragraph (1) of subdivision  
27 (c), in the event the case is referred to criminal authorities for  
28 prosecution and the authority requests that the prisoner not be  
29 notified so as to protect the confidentiality of its investigation, no  
30 notice to the prisoner shall be required until an accusatory  
31 pleading is filed with the court, or the authority notifies the  
32 warden, in writing, that it will not prosecute or it authorizes the  
33 notification of the prisoner. The notice exceptions provided for in  
34 this paragraph shall only apply if the criminal authority requests  
35 of the warden, in writing, and within the 15 days provided in  
36 subparagraph (A) of paragraph (1) of subdivision (c), that the  
37 prisoner not be notified. Any period of delay of notice to the  
38 prisoner shall not exceed 30 days beyond the 15 days referred to  
39 in subdivision (c). In the event that no prosecution is undertaken,  
40 the procedures in subdivision (c) shall apply, and the time

1 periods set forth in that subdivision shall commence to run from  
2 the date the warden is notified in writing of the decision not to  
3 prosecute. In the event the authority either cancels its requests  
4 that the prisoner not be notified before it makes a decision on  
5 prosecution or files an accusatory pleading, the provisions of this  
6 paragraph shall apply as if no request had been received,  
7 beginning from the date of the cancellation or filing.

8 In the case where the prisoner is prosecuted by the district  
9 attorney, the Department of Corrections shall not deny time  
10 credit where the prisoner is found not guilty and may deny credit  
11 if the prisoner is found guilty, in which case the procedures in  
12 subdivision (c) shall not apply.

13 (g) If time credit denial proceedings or criminal prosecution  
14 prohibit the release of a prisoner who would have otherwise been  
15 released, and the prisoner is found not guilty of the alleged  
16 misconduct, the amount of time spent incarcerated, in excess of  
17 what the period of incarceration would have been absent the  
18 alleged misbehavior, shall be deducted from the prisoner's parole  
19 period.

20 (h) Nothing in the amendments to this section made at the  
21 1981–82 Regular Session of the Legislature shall affect the  
22 granting or revocation of credits attributable to that portion of the  
23 prisoner's sentence served prior to January 1, 1983.